

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Crl.Rev.Pet.No. 2082 of 2005()

AGAINST THE ORDER DATED 15/03/2005 IN CRMP.271 & 377/2004 IN
SC.39/2003 of ADDL. SESSIONS COURT, THRISSUR

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REVN. PETITIONER: COMPLAINANT

DEVARAJAN, S/O.KUTTAPPU,
IRIPPULLY HOUSE, P.O.THIRUVATHRA,
CHAVAKKAD, THRISSUR DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN

RESPONDENTS: ACCUSED AND STATE

1. JOSE PAUL, S/O.VALIYAVEETIL ITTOOP,
EDATHURUTHY DESOM,
KATTOOR VILLAGE, THRISSUR DISTRICT.

2. ARJUNAN, S/O.KUTTAPPAN,
CHOONDAL VEEDU, P.O.CHOONDAL,
THRISSUR DISTRICT.

3. THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.M.K.DAMODARAN (SR.)
SRI.M.P.PRABHANANDAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 2082 of 2005
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Dated: 13-07-2007

ORDER

The revision petitioner challenges the order dated 15-3-2005 passed by the I Addl. Sessions Court, Thrissur dismissing Crl.M.P. No. 271 of 2004 filed by the Special Public Prosecutor under Sec. 216 Cr.P.C. for alteration of the charge into 302 I.P.C. from 304 I.P.C. and allowing Crl.M.P. 377 of 2004 filed by the accused seeking their discharge.

2. Adv. Sri. P. Ramachandran, the learned counsel appearing for the revision petitioner/complainant made the following submissions before me in support of the revision:-

The son of the revision petitioner died in the night of 30-5-1998. The first accused who was the supervisor and the second accused who is a co-worker were working along with the petitioner's son who was on night duty during the ill-fated night . It was for the first time that the revision petitioner's son was asked to do night duty in the automobile

workshop where he was employed as a welder. The version given by the accused was that the deceased died due to chest pain and breathing problem which was against the medical opinion as per which the death of the deceased was due to cerebral concussion. If death was due to cerebral concussion, there must have been some blunt force applied on the head of the deceased. The 2nd accused was admittedly working along with the deceased on a vehicle during that night. The post mortem certificate had shown a scalp contusion on the temporo frontal region region. This injury could not have been sustained if he had only developed chest pain and breathing problem. Moreover, if the deceased had such an injury then the version given by the accused that the deceased was seen holding both his hands against his chest and showing discomfort in breathing cannot be true. They were, therefore, deliberately throwing all concerned off the scent with a view to escape from their liability. The dead body of the deceased was taken to the hospital by the employer of the deceased to the

Government Hospital without the consent of the revision petitioner or his relatives. They were not allowed to see the dead body of the deceased. Neither the accused persons nor the partners of the workshop where the deceased was employed attended the funeral of the deceased. The accused who was last seen alive in the company of the deceased definitely owed an explanation for the unexpected and sudden death of the deceased. In the light of these suspicious circumstances the court below was not justified in discharging the accused.

2. After hearing both sides and after perusing the prosecution records, I am afraid that I cannot agree with the above submissions. The death of 23 year old Thridesan, son of the revision petitioner was admittedly on 30-5-1998. He was employed as a welder in Raja Motors where the Ist accused was a Supervisor and 2nd accused was a co-welder . Consequent on the death of his son, the revision petitioner lodged a complaint before the Guruvayoor Police on 31-5-1998. The police registered a case as Crime No.

126 of 1998 under the caption "unnatural death" . Alleging that the Guruvayoor Police was not investigating the case properly the revision petitioner filed O.P. 606 of 1999 before this Court. This Court disposed of the said O.P. directing investigation of the case by the CBCID. The case diary was thereafter transferred to the Crime Branch Police and registered as Crime No. 135 of 1999 (CBCID). After investigation, the Crime Branch Police filed a refer report before the Magistrate to the effect that death of Thridesan was an accidental death possibly due to the accidental contact of the hammer on his forehead while he was engaged in the repair of an automobile. After receipt of notice on the refer report the revision petitioner lodged a protest complaint before the J.F.C.M., Chavakkad which was filed as Crl.M.P. 20733 of 2001. In the said protest complaint, the revision petitioner alleged that the two accused persons were guilty of murder punishable under Section 302 read with Sec. 34 I.P.C. During the course of the mandatory enquiry under Sec. 202 Cr.P.C., nine

witnesses were examined as C.Ws.1 to 9. After the conclusion of enquiry, the Magistrate took cognizance of the offence punishable under Sec. 304 read with Sec. 34 I.P.C. The case was taken on file as C.P. 16 of 2002 and thereafter the case was committed to the Court of Sessions, Thrissur on 27-9-2002. The case was registered as S.C. 39 of 2003 before the Sessions Court and was made over to the I Addl. Sessions Court, Thrissur for hearing and disposal. After receipt of summons, the accused appeared before Court. in the meanwhile, the Special Public Prosecutor in-charge of the case filed Crl. M..P. 271 of 2004 for alteration of the charge from 304 to 302 I.P.C. The accused filed Crl.M.P. 377 of 2004 seeking a discharge. Both the above petitions were jointly heard and disposed of by the impugned common order dated 15-3-2005.

3. C.W.1 examined before the Magistrate was a close friend of the deceased. He had gone to the house of the deceased in search of the deceased in the night on 30-5-1998 and was told that the deceased had night shift during

that night and, therefore, he would not come home. He therefore, went to Raja Motors where the deceased was working. He claims to have met the deceased who had introduced the accused to him. he returned at about 9.45 p.m. What he heard next day was that the deceased died at about 4 a.m.

4. C.W.2 is a neighbour of the revision petitioner. He was the person who had shown the way to certain persons who had came from Raja Motors in the night at about 2.15 on 30-5-1998 asking for the house of the deceased. Those persons informed the inmates of the house of the deceased that the deceased had taken till suddenly and was taken to Raja Hospital. On coming to know of this information, the revision petitioner and his younger son went to Raja Hospital.

5. C.W.3 was the Medical Superintendent of Raja Hospital. The deceased was taken to him at about 1 a.m. on 31-5-1995 and it was he who pronounced the deceased dead after examining him. He had not noted any injury on

the body of the accused. Since the deceased was brought dead, he informed the police and sent the dead body to the Government Hospital, Chavakkad for postmortem. This witness deposed that the deceased was brought by the accused who were also employed in the Raja Motors. he further stated that Raja Hospital where he was a Medical Superintendent was a sister concern of Raja Motors.

6. C.W.4 who was the lecturer in Forensic Medicine, Medical College Hospital, Thrissur conducted autopsy over the deadbody of Thridesan, did not notice any external injuries on the dead body. The only internal injury noted was the following:-

"1. Scalp contusion on left temporo frontal region 2x2cm., 6.5 c.m. outer to midline and 7.5 c.m. above outer end of left eyebrow".

He had preserved the viscera and blood of the deceased for chemical analysis. Hence he reserved his opinion pending the chemical report of the viscera and blood. After the receipt of chemical report, C.W.4 opined as follows:

“No definite opinion as to the cause of death can be furnished. However, death due to poisoning can be excluded. The chance of death due to cerebral concussion cannot be ruled out”.

When examined before Court, C.W.4 stated that the internal injury noted was not likely to cause the death, there was no external injury seen on the dead body and that cerebral concussion is an injury caused to the brain.

7. C.W.5 was the head constable of Guruvayoor Police Station who recorded the first information statement of the revision petitioner and registered Crime No. 126 of 1998.

8. C.W. 6 was the police constable of the said police station who had guarded the dead body on 31-5.1998 and who later produced the same before the Medical college Hospital, Thrissur for postmortem.

9. C.W. 7 was the Senior Superintendent of the office of the R.D.O., Thrissur. The F.I.S., F.I.R., inquest report and final report of Guruvayoor Police as well as final report of the C.B.C.I.D. were all marked through him.

10. C.W.8 was the Circle Inspector of Police, Guruvayoor who had conducted the initial investigation.

11. C.W.9 was the brother-in-law of the deceased. He had accompanied the revision petitioner to the Raja Hospital and later to the Medical College Hospital. He deposed that they were not allowed to see the dead body, he entertained a suspicion that the accused might have done the deceased to death.

12. It was after an evaluation of all these materials that the learned Addl. Asst. Sessions Judge discharged the accused. As rightly observed by the trial court, there was no material to show that the deceased was asked to do night duty for the first time during that ill-fated night. No external injury was noted on the dead body of the deceased by the autopsy surgeon. The internal injury was a scalp contusion for which there was no corresponding external injury. The autopsy surgeon has opined that there was no likelihood of the said injury being the cause of death. Absolutely no sort of enmity or motive was attributed to

both the accused. The deceased was doing repair work of a car in the automobile workshop at the relevant time. He had suddenly stopped his work and he came out of the car and was seen with his hands held against his chest. This was the version given by the accused who alone were present in the premise at the relevant time. The 2nd accused had given first aid in the form of masso therapy. The accused were under the impression that the deceased might have sustained some electric shock in the course of welding. Anyway, the admitted fact is that it was the accused persons who rushed the deceased to Raja Hospital. In the particular situation, they cannot be blamed for not taking the deceased to the Government Hospital. First of all, Raja Hospital belonged to the very same employer and that would have been more convenient for all concerned. The Superintendent employed at Raja Hospital and who had pronounced the deceased dead also did not notice any external injury on the body of the deceased. Merely because the accused or anybody

connected with Raja Motors did not attend the funeral, it cannot be straight away inferred that their conduct was attributable to a guilty mind. Nobody has a case that it was the accused who asked the deceased to stay on for night duty. Similarly, the accused had no control over the affairs at Raja Hospital. The Revision petition has no case that it was the accused who did not allow him to see the dead body. In the normal course when a person dies in a private hospital, the immediate concern of the hospital authorities will be to remove the body to the Government Hospital for postmortem examination. From that alone, it is not possible to smell a rat.

13. While framing the charge, the court is bound to look into only the document produced by the prosecution. After an evaluation of the documents produced by the prosecution if the court does not find a prima facie case to proceed against the accused, it will be justified in discharging the accused. The yardstick for forming the opinion regarding the prima facie case is the existence of

sufficient ground for proceeding against the accused. Even if two views are possible, and the judge is satisfied that the evidence produced before him only gives rise to some suspicion and not a grave suspicion against the accused then the judge is fully within his right in discharging the accused. This statement of law enunciated in **Union of India v. Prafullakumar – (AIR 1979 SC 306)** has been accepted as the classic statement and has been followed in various other decisions both by the Apex court as well as this Court. On the materials before this Court, the trial Judge was not satisfied that this was a case giving rise to a grave suspicion against the accused so as to justify the framing of charge against them. The accused were, therefore, rightly discharged by the courts below. Since the charge was not liable to be framed against the accused, the question of altering the charge also would not arise. I see no irregularity, impropriety, or illegality in the order passed by the trial court. Accordingly, this petition is dismissed.

12. No doubt, the premature death of 23 year old

Thridesan was really unfortunate. This Court is able to fathom the grief of the father. But, then, so long as there is nothing to indicate that the accused had any role to play in the death of Thridesan, the Criminal court cannot put them on trial on a grave charge of culpable homicide or murder.

V. Ramkumar, Judge.

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